BUSINESS SUCCESSION PLANNING

Buy-Sell Agreement: Agreement to control disposition of business upon certain events.
(1) Owner's desire to sell (Right of First Refusal).
(2) Divorce (Sale at Appraised Value).
(3) Guardianship/Incapacity (Sale at Appraised Value).
(4) Death (Sale funded by Life Insurance).

Types of Buy-sell Agreements:
(1) **Entity Buy-Sell:** Business purchases life insurance to purchase deceased owner's interest.
(2) **Cross-Purchase Buy-Sell:** Owners purchase life insurance on each other's life to purchase deceased owner's interest.

Advantage to Entity Buy-Sell:
(1) Business in lower tax bracket.
(2) If purchased financed, business can deduct interest.
(3) Fewer policies required.
(4) Purchased policies are subject to income tax.

Advantages to Cross-Purchase:
(1) Owners pay for own insurance and cost is not borne by business (unequal ownership bears total cost).
(2) Higher tax basis for owners.
(3) No potential dividend (if only portion is purchased).
(4) No potential alternative minimum tax.
(5) No potential accumulated earnings tax.

Covenant Not to Compete: Agreement not to compete with business for reasonable period of time (2 years) and for reasonable geographic area (where business is operating).

Employment Agreement: Agreement of employment to insure business continuity and protect trade secrets.

Issues:
(1) Who will manage business at death? (Personal Representative, Trustee?)
(2) Who will manage business during illness or incapacity? (Durable Power of Attorney?)
(3) How can other family members be compensated for business going to one child? (life insurance?)
(4) Should a revocable trust be used to avoid probate and allow Trustee to operate business for an extended period of time to improve marketability? (Probate is required to be concluded within a year).
(5) How do you value the business?
(6) Do you need Key-man insurance?
(7) Do you need disability insurance?
(8) What is your goal? Sell business at a certain point or pass business to a child.

Liability Issues:

Separate legal entity such as corporation or LLC provides owner protection from contractual debts of the business (unless personally guaranteed) and negligence of employee (unless personally supervised).

Separate legal entity does not protect you from liability from your own negligence.

Must sign contracts as officer of the entity (i.e., John Doe, Managing Member of XYZ LLC or John Doe, President of XYZ, Inc.) to avoid personal liability. Again, make sure you do not inadvertently sign a personal guarantee. Most corporate credit cards require a personal guarantee.

Must maintain the formalities of separate legal entity (separate business bank account, arms-length transactions, minutes, operating agreement or bylaws, ownership certificates) to avoid personal liability (Piercing the Corporate Veil).

Protected assets under Florida Law: Qualified Retirement Plans, IRAs, 401(k)s, annuities, life insurance as long as not purchased to hinder or delay creditors. Homestead (1/2 acre within municipality, 160 acres outside municipality) – Protection forfeited in bankruptcy if purchased to hinder or delay creditors within 10 years of bankruptcy filing.

Partners in a partnership are personally liable for all business debts. A general partner in a limited partnership is liable for all business debts. Limited partners are not liable for the debts of the partnership.

Olmstead v. Federal Trade Commisson: Single member LLCs are not protected from the debts of the single member.

Tenants by Entirety: Ownership acquired by husband and wife. Tenants by Entirety property cannot be seized to pay debts of one spouse.

Off-shore Trusts: Assets in trust in a foreign country which does not recognize U.S. judgment. Creditor required to litigate in foreign country under civil law rather than common law.